

Huntley v. Snyder  
(In re Gerald Snyder)

Adv. Proc.# 95-6190-fra  
Case # 695-61784-fra7

7/26/96

FRA

Unpublished

The Plaintiff initiated this action to determine the dischargeability under 11 U.S.C § 523(a)(6) of a default judgment obtained in Coos County Circuit Court against the debtor. The default judgment was based on a complaint filed in that court alleging either the intentional or negligent wrongful death of the Plaintiff's mother by the debtor.

The Plaintiff agreed to a trial on stipulated facts with the default judgment to be the only evidence to be considered by the bankruptcy court. In the Ninth Circuit, a state court judgment is given the same preclusive effect in federal court as it has in the state in which it arose. In Oregon, a valid default judgment admits the truth of all material allegations of the complaint. In this case, however, the underlying complaint pled alternative facts and the default judgment provided no guidance as to which set of facts the judgment relied upon. Given those circumstances, the bankruptcy court held that the default judgment had preclusive effect only as to the amount of damages. The Plaintiff therefore failed to meet her burden as to the "willful and malicious" nature of the injury as is required to be proven under § 523(a)(6). The debt is dischargeable.

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8 UNITED STATES BANKRUPTCY COURT  
9 FOR THE DISTRICT OF OREGON  
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11 IN RE )  
12 GERALD V. SNYDER, ) Case No. 695-61784-fra7  
13 Debtor. )  
14 GLORIA HUNTLEY, Personal )  
15 Representative of Louise )  
16 Billie Williams Estate, )  
17 Plaintiff, )  
18 vs. ) Adversary No. 95-6190-fra  
19 GERALD VERNON SNYDER, )  
20 Defendant. ) MEMORANDUM OPINION

21 Plaintiff in this action has filed a motion for an order to  
22 compel the production of the psychiatric records of the debtor  
23 which are currently in the possession of two physicians who have  
24 been treating him. The Defendant responds that those records are  
25 protected under a psychotherapist-patient privilege. Plaintiff  
26 argues that the debtor has waived that privilege. For the reasons

1 that follow, this court holds that the records in question are not  
2 /////  
3 protected under a physician-patient or psychotherapist-patient  
4 privilege.

5 FACTS

6 Plaintiff, as personal representative of Ms. William's estate,  
7 filed a wrongful death complaint against the debtor in Coos County  
8 Circuit Court. A default judgment in excess of \$200,000 was  
9 entered by the Circuit Court. The debtor subsequently filed for  
10 bankruptcy under Chapter 7. This adversary proceeding was  
11 instituted by the Plaintiff to challenge the dischargeability of  
12 the state judgment under 11 U.S.C. § 523(a)(6). In furtherance of  
13 her case, the Plaintiff wishes to compel production of medical  
14 records relating to debtor's psychiatric treatment.

15 PSYCHOTHERAPIST-PATIENT PRIVILEGE

16 The evidentiary rule in federal court regarding a person's  
17 right to keep privileged communications confidential is found in  
18 F.R.E. 501. That rule reads as follows:  
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20 Except as otherwise required by the Constitution of the  
21 United States or provided by Act of Congress or in rules  
22 prescribed by the Supreme Court pursuant to statutory  
23 authority, the privilege of a witness, person,  
24 government, State, or political subdivision thereof shall  
25 be governed by the principles of the common law as they  
26 may be interpreted by the courts of the United States in  
the light of reason and experience. However, in civil  
actions and proceedings, with respect to an element of a  
claim or defense as to which State law supplies the rule  
of decision, the privilege of a witness, person,  
government, State, or political subdivision thereof shall  
be determined in accordance with State law.

1 In other words, if the dispute in federal court must be  
2 resolved with reference to state law, then the existence and extent  
3 of an evidentiary privilege is determined by state law. However,  
4 in a federal civil action where the controlling law is federal law,  
5 the Court must look to federal law to determine whether a privilege  
6 exists.

7 The Plaintiff has asked the court in this adversary proceeding  
8 to find that the claim held by her is nondischargeable under 11  
9 U.S.C. § 523(a)(6). Resolution of that question is a matter of  
10 federal bankruptcy law.  
11

12 The Ninth Circuit Court of Appeals held in a 1989 opinion that  
13 "[t]his circuit has not recognized a psychotherapist-patient  
14 privilege in a criminal context. Neither have we adopted a  
15 physician-patient privilege." They further stated that "[t]he  
16 psychotherapist-patient privilege has developed by state statutory  
17 enactment" and does not exist at common law. In re Grand Jury  
18 Proceedings, 867 F.2d 562 (9th Cir. 1989).  
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#### 20 LIMITS ON DISCLOSURE

21 While the records are not subject to any evidentiary privilege  
22 in this Circuit, there can be no doubt that Defendant has an  
23 interest in maintaining the privacy of the records. See United  
24 States v. Diamond, 964 F.2d 1325 (2d Cir. 1992), Jaffee v. Redmond,  
25 51 F.3d 1346 (7th Cir. 1995) (Both cases recognizing a federal  
26 psychotherapist-patient privilege). As the Diamond court pointed  
out:

1            "[I]t can hardly be disputed that communications  
2            between a patient and a psychotherapist typically involve  
3            far more intensely personal information than  
4            communications to other kinds of doctors, a fact that  
5            accounts for the somewhat wider recognition of a  
6            privilege in the case of psychotherapists than in the  
7            case of physicians generally. See *Developments*, 98  
8            Harv.L.Rev. at 1539. The diagnosis of a psychotherapist  
9            may also involve matters that a patient regards as highly  
10            personal. Disclosure of communications to  
11            psychotherapists and their diagnoses would frequently be  
12            embarrassing to the point of mortification for the  
13            patient. Nor can it be seriously disputed that  
14            unrestrained disclosure might discourage persons from  
15            seeking psychiatric help. 964 F.2d at 1328.

16            The Circuit Court in *In re Grand Jury Proceedings*, *supra*, did  
17            not have to wrestle with this consideration, given the non-public  
18            nature of grand jury proceedings. (The target of the grand jury's  
19            investigation is referred to in the opinion as "Jane Doe".) This  
20            is not to say that the case is readily distinguishable: The  
21            Court's reasoning that the privilege has never existed in common  
22            law is just as applicable in this context. However, where there  
23            are no guarantees of privacy such as exist in grand jury  
24            proceedings, compelled disclosure of such sensitive matters should  
25            be conditioned in a manner which strikes a reasonable balance  
26            between the patient's interests and the demanding party's right to  
27            discovery. Fed. R. Civ. P. 26(c) (made applicable to bankruptcy  
28            cases by B.R. 7026) authorizes orders limiting use or disclosure of  
29            information obtained in discovery in order to avoid embarrassment  
30            of a party or other person.

1           In this case, the records sought by Plaintiff -- and any  
2       copies thereof -- must be maintained and used so as to limit  
3       disclosure of the information contained therein to those who need  
4       it in order to prepare this case for trial. Accordingly, the court  
5       will order that the records, once delivered, be maintained in a  
6       place not accessible to persons with no need to view them, and that  
7       they be revealed to or discussed with only those members of  
8       Plaintiff counsel's staff involved in the case, and any expert  
9       witness engaged by Plaintiff for the purpose of evaluation or  
10      testimony about Defendant's condition. Disclosure to Plaintiff  
11      herself is permitted to the extent reasonably necessary to allow  
12      her to make informed decisions about the conduct of the case. All  
13      persons to whom disclosure is made are to be bound by the  
14      restriction on further disclosure contained in the order. In the  
15      event records are to be filed with court, the filing party shall  
16      ensure that they are filed under seal.

18                               DISCOVERY BAR DATE

19           Defendant argues that the motion should be denied in light of  
20      this Court's order closing discovery prior to the time Plaintiff  
21      moved to compel production of the records in question. The order  
22      was part of a standard scheduling order entered shortly after the  
23      answer was filed. It provided that discovery would close 70 days  
24      after entry of the order -- in this case, on November 14, 1995.  
25      The motion was filed on December 1, 1995.

Scheduling orders are designed to expedite cases, and the business of the court. Relief from the effect of such orders should not be denied where no prejudice attaches. Defendant does not argue, nor does the record reflect, that he has been prejudiced by the delay.

## CONCLUSION

Because resolution of this adversary proceeding is dependent on federal bankruptcy law, the Court must look to federal law to determine whether the records sought are subject to a psychotherapist-patient privilege. As no such privilege is recognized under federal law in the Ninth Circuit, the records are not protected by privilege and are subject to the Plaintiff's subpoena duces tecum. An order consistent with this opinion will be entered.

FRANK R. ALLEY, III  
Bankruptcy Judge